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No. 246

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In the Supreme Court of The United States

October Term, 1958

WADELMIRO ARROYO, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The First Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. 11-17) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1958. On July 24, 1958, the time to file a petition for a writ of certiorari was extended by Mr. Justice Frankfurter until August 4, 1958. The petition for a writ of certiorari was filed August 1, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence established that petitioner, a representative of employees, received money from employers for his own use, although ostensibly accepting such money for the purposes of a proper union welfare fund.

STATUTE INVOLVED

Section 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, 29 U.S.C. 186, provides in pertinent part:

* * * * *

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable * * * (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or

unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund * * *.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

* * * *

STATEMENT

Petitioner was convicted in the United States District Court for Puerto Rico on an indictment charging a violation of § 302(b) and (d) of the Labor Management Relations Act, in that, as a representative of employees, he unlawfully received $15,000 from the employers not for a purpose permitted by the statute (R. 2, 3-5). He was sentenced to imprisonment for nine months and to pay a fine of $2000 (R. 2). On appeal, the conviction was affirmed.

The evidence showed that on February 21, 1953, two allied sugar corporations engaged in interstate commerce entered into a collective bargaining agreement with Local 1781, of which petitioner was president (R. 42-44). Article 6 of the agreement provided that the two employers would together pay $15,000 to an employee welfare fund to be administered by a committee appointed by mutual agreement of the parties (R. 26). At the time the agreement was

executed, the parties had informally agreed that petitioner would be the union representative on the committee (R. 51, 105-106).

Petitioner told the employers' representative that there was to be a meeting of the workers that same night and that he would like to show them the checks for the welfare fund (R. 46). The companies gave to petitioner two checks for $7500 each payable to Local 1781, with vouchers attached identifying the checks as the employers' contribution to the welfare fund. Petitioner endorsed the checks for the union as its president and had them endorsed also by the union's secretary (R. 27-31, 45-46, 114). Petitioner then opened an account in the name of the union's welfare fund in the National City Bank of Ponce and gave the bank a purported resolution from the union authorizing withdrawals from the account upon his own signature alone[1] (R. 67, 113, see also R. 115). Petitioner drew checks against that account for his own personal use (R. 76, 95). In March, 1953, the balance of $9,813.89 was withdrawn by a manager's check (R. 68) and deposited in the account of the union established March 1953 in the Banco de Ponce. Petitioner had sole authority to draw on this account (R. 79). Petitioner drew on this account for purposes not within the welfare fund (R. 82-83, 86-88, 91-92, 97-98).

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[1] The union had established in 1952 a welfare fund account in the Banco de Ponce (R. 51, 52). Checks on this fund were countersigned by a representative of the employers (R. 52).

ARGUMENT

The petition for a writ of certiorari is predicated on the assumption that the evidence showed only embezzlement of welfare funds and that the courts below decided that such embezzlement is an offense under Section 302 of the Labor Management Relations Act. But that was neither the theory of the prosecution nor the reasoning of the courts below. It was the government's theory, which the jury found proved and the courts below sustained, that at the moment petitioner received the checks his intent was to take the money, not for the welfare fund, but for himself. The judge charged the jury that "if you believe that from the time the defendant received said sum of money from the employers he had complete and sole control of said money, in violation of the collective bargaining agreement and the law, and utilized such money or any part of it for his personal benefit" then an offense had been committed under the statute (R. 237). In other words, the decision below represents merely a holding that, on the particular facts of this case, petitioner received the money, not for the kind of a welfare fund exempt under the statute, but for himself. He managed to get the money by pretending to take the checks for the welfare fund, but he took the money intending to use it for his own purposes. This is not a case where the money reached a proper welfare fund and was then misused, the situation which the proposed remedial legislation, referred to by petitioner (Pet. 6-7), is designed to reach. This is a case where petitioner from the start planned and carried through his plan to keep the money from ever reaching the proper welfare fund. The evidence of

the later use of the moneys by petitioner was offered, not as in itself constituting the wrongful act, but as casting light on the intent with which petitioner received the funds in the first instance.

There is no question but that a representative of employees who receives money from an employer for his own use (not for services or merchandise) commits a violation of Section 302. *United States* v. *Ryan*, 350 U.S. 299. Petitioner argues (Pet. 8) that he could not be guilty of unlawfully receiving the money for his own use (in the guise of receiving it for the welfare fund) because the evidence indicates that the employers were in good faith making the payment for the welfare fund. But as the court below pointed out (Pet. 16), the statute does not require mutuality of guilt for the conviction of either the employer or the representative of employees. It is possible to receive with guilty intent even though the giver acts in good faith. The fact that the employers intended in good faith to make the payment authorized by law does not necessarily mean that petitioner received the payment with the same intent. Rather, as the jury found, he received the money ostensibly for the welfare fund with intent to obtain control over it before it reached the welfare fund. He therefore received it from the employer for a purpose not authorized by the statute and was properly found guilty as charged.

The case does not present any question of general importance. The decision below is essentially one on the sufficiency of the evidence and presents no question requiring review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1958.

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